RECEIVED

MAY 17 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

BEFORE THE

Federal Communications Commission

WASHINGTON, D. C. 20554

DOCKET FILE COPY ORIGINAL

In the Matter of	)	
	)	
Review of the Commission's Regulations Governing Television Broadcasting	)	MM Docket No. 91-221
	)	
Television Satellite Stations Review of Policy and Rules	)	MM Docket No. 87-8

To: The Commission

COMMENTS OF THE JET BROADCASTING CO., INC.

DENNIS F. BEGLEY
MATTHEW H. McCORMICK

REDDY, BEGLEY, MARTIN & McCORMICK
1001 22nd Street, NW, Suite 350
WASHINGTON, DC 20037

Counsel for
THE JET BROADCASTING CO., INC.

May 17, 1995

No. of Copies rec'd 0+5
List ABCDE

TABLE OF CONTENTS

Summary

Jet Broadcasting Co., Inc. ("Jet"), licensee of Stations WJET-TV, Channel 24 and WJET(FM), both Erie, Pennsylvania, encourages the Commission to modify the "duopoly" rule, abolish the "one-to-a-market" rule, and permit television local marketing agreements.

Jet has been engaged in broadcasting for more than four decades. The experience of its majority owner, Myron Jones, is even longer. Jet and Mr. Jones have owned, operated and competed with radio/television combinations. These comments are based on that wealth of experience.

A. Local Ownership or Duopoly Rule. Jet urges the Commission to reform the local ownership rule in two ways: First, the contour used in application of the rule should be changed from Grade B to Grade A to more accurately reflect the area in which a station's signal may be received reliably. Second, the Commission should permit an entity to own two stations (at least two UHF stations) with overlapping contours. In light of the plentiful supply of video programming from numerous sources, to allow a broadcast licensee to own two stations within a given geographic area would not undermine the objectives of competition or diversity.

B. One-to-a-Market Rule. Jet strongly encourages the Commission to eliminate the one-to-a-market rule, using instead the ownership limits placed on each service to prevent undue concentration. Based on its experience, Jet firmly believes that video programming and audio programming are distinct products with separate markets. The fact that a radio licensee might

also own a television station (or two) in the market would have very little impact on whether consumers listen to the company's radio stations. Similarly, a television licensee would not necessarily gain viewers simply because it also owns radio stations in the same area. Co-ownership of radio and television stations by a single entity in the same market would not give that entity market power over like advertising rates. Competition in both radio advertising and television advertising is sufficiently intense that any attempt to unduly raise rates would drive advertisers to other stations or alternative media outlets. Permitting radio/television combinations would permit efficiencies of scale and result in financially stronger licensees that are better able to make the investments necessary to enhance service to the public.

C. Local Marketing Agreements. LMAs provide licensees and other entrepreneurs flexibility to respond to changing opportunities and needs in the delivered television programming and local advertising markets. In a duopoly situation, the licensee remains responsible for fulfillment of its non-delegable duties. In light of the size of investment a television station entails, the Commission can well expect the licensee of such a station to fulfill those duties and to keep a close watch on those using its airtime.

BEFORE THE

Federal Communications Commission

WASHINGTON, D. C. 20554

In the Matter of	)	
	)	
Review of the Commission's	)	MM Docket No. 91-221
Regulations Governing	)	
Television Broadcasting	)	
	)	
Television Satellite Stations	)	MM Docket No. 87-8
Review of Policy and Rules	)	

To: The Commission

COMMENTS OF THE JET BROADCASTING CO., INC.

The Jet Broadcasting Co., Inc. ("Jet"), licensee of Stations WJET-TV, Channel 24, and WJET(FM), both Erie, Pennsylvania, herein offers its comments with respect to the Further Notice of Proposed Rule Making ("FNPRM") in the above-captioned proceedings. Jet's comments focus on three particular issues pertaining to ownership of television broadcast stations: (1) the local ownership or "duopoly" rule, (2) the radio/television cross-ownership or "one-to-a-market" rule, and (3) television local marketing agreements.

Jet has been engaged in the broadcasting industry for more than four decades. The experience of its majority owner, Myron Jones, is even longer. During that time, Jet and Mr. Jones have owned, operated and competed with radio/television combinations. In 1951 Jet established WJET(AM), a Class IV (now termed a Class C) station. JET established WJET-TV in 1966. Since commencing operations, WJET-TV has been a primary affiliate of the ABC Television Network. In 1986, pursuant to Commission authorization, Jet acquired WJET(FM), a Class A station, while simultaneously transferring its AM station to a minority-controlled entity. The "one-to-a-market" rule was waived. In waiving the rule, the Commission took into consideration that the transaction would result in the first minority-owned station in Erie and that Jet, whose radio/television combination was "grandfathered," was essentially substituting one limited-coverage station for another.

Jet's principals previously owned Stations WHOT(AM) and WHOT-FM in the Youngstown, Ohio market and competed against radio/television combinations there. Additionally, for 18 years Mr. Jones was a radio station owner in the Pittsburgh market, where he competed against well-established, well-financed radio/television combinations. During his tenure in Pittsburgh not only was Mr. Jones able to operate profitably, he was successful in uprading his AM station (WEEP) from 1 kilowatt to 50 kilowatts and building a Class B station (WEEP-FM). Based on this wealth of experience, Jet urges the Commission to liberalize both the television duopoly and one-to-a-market rules. Furthermore, LMAs satisfying the guidelines previously established for radio, should be permitted.

I. Local Ownership or Duopoly Rule

Jet urges the Commission to reform the local ownership rule in two ways:

First, the contour used in application of the rule should be changed from Grade B to Grade A. Such a change would more accurately reflect the area in which a station's signal may be reliably received over the air. Experience has taught television broadcasters that their signals are virtually nonexistent at the fringe of their Grade B contours. Moreover, in an era in which multiple sources of video programming are available (including cable, videotape rental, and direct broadcast satellite), consumers are unwilling to invest in antennas sufficient to pull in Grade B signals. Adoption of a Grade A contour standard would more realistically reflect the actual over-the-air market area of the stations in question. The Grade A contour standard, which is based on signal propagation characteristics and not population density, should be adopted for all stations and not just for particular markets. It is particularly important that the Grade A contour be adopted for UHF stations, which historically have suffered from a coverage handicap.

Second, the Commission should permit an entity to own two stations (at least two UHF stations) with overlapping contours. The "delivered video programming market," as discussed in the FNPRM, is fragmented. Consumers have a wide variety of choices for video programming. Over-the-air television, as has been well documented, no longer has the dominance it once did. As the Commission notes, cable systems pass nearly 90% of all U.S. households and 62.5% of all U.S. households subscribe. Direct broadcast satellite service is available across the country and is growing rapidly. Moreover, 80% of U.S. households have a VCR. See FNPRM at ¶¶26-28. Over-the-air television, in order to effectively compete with other widely available sources of delivered video programming, must be able to enjoy the efficiencies of scale that relaxation of the duopoly rule would permit. By allowing television duopolies, the Commission will permit over-the-air broadcasters to become economically healthier and thus, with sufficient resources to invest in attractive programming, to compete more effectively with other video media. In light of the plentiful supply of video programming from a plethora of sources, to allow a broadcast licensee to own two stations within a given geographic area will not undermine the objectives of competition or diversity.

With respect to the local video advertising market, allowing an entity to own two television stations (except in the very smallest markets) would not confer upon that entity significant power to constrain competition. Advertisers, stated simply, have alternatives available, including, most obviously, local cable television systems and other over-the-air broadcast stations. With respect to the smallest markets, Jet suggests that the same threshold be adopted as for radio duopolies, i.e., that any proposed combination must constitute less than 50% of the television stations in the market.

Jet urges that, as in radio, the relevant "market" be defined by the contours of the stations in question, not by the ADI or DMA to which the stations are assigned. In many instances, a station, particularly a UHF station, will not provide a useable over-the-air signal to the entire ADI or DMA. Moreover, the boundaries of ADIs and DMAs frequently are irregular and can change from year to year as viewership shifts.

Furthermore, no "share cap" or other audience measurement standards should be adopted. The level of viewership of a particular station is driven by the specific programs the station carries. Accordingly, viewership can change dramatically from rating period to rating period and from program to program. Over any extended period of time, no television duopoly is likely to garner ratings so strong as to confer market power upon the licensee.

II. One-To-A-Market Rule

Jet strongly encourages the Commission to eliminate the one-to-a-market rule, using instead the ownership limits placed on each service to prevent undue concentration. Jet believes its experience in the Erie market represents a useful example.

Since 1966, Jet has been a "grandfathered" exception to the one-to-a-market rule. As noted above, Jet had a radio station many years before establishing WJET-TV in 1966. At the time WJET-TV was established, the market already had two stations, one VHF and one UHF. Knowledgeable television authorities considered Erie at the time to be a "two-and-a-half" station market. In light of the fact that the previously established UHF station, owned by a newspaper publishing company, consistently had lost money, neither banks nor equipment manufacturers were interested in financing a third television station in the market, particularly a UHF station. Moreover, ABC, the only network available at the time, was then the weakest of the three major networks. Only the pledge of assets of Jet's radio station enabled the company to obtain necessary financing to put WJET-TV into operation. With the help of its successful radio station, Jet was able, after nearly a decade of struggle, to develop WJET-TV to a point where the corporation was reasonably sure of staying in business.

By 1976, however, competition from large FM facilities began to erode WJET(AM)'s audience. Jet attempted to acquire a small failing FM facility. The FM station could be operated profitably, Jet calculated, by using economies of scale available, such as operating the FM station and the television station in the same building with common management. The

Commission, however, denied Jet's request for waiver of the one-to-a-market rule in 1977. Fortunately, a great resurgence of the ABC Television Network came shortly thereafter, enabling continued progress for WJET-TV. Ten years later, in 1987, and at a much greater acquisition cost, Jet made a new proposal to acquire the same FM facility, which was still in financial difficulty. As noted above, with the transfer of Jet's AM station to a local minority-controlled entity, the Commission permitted Jet to acquire the Class A FM facility, now WJET(FM). Jet made the new FM station a success in less than a year. Not all economies of scale were maximized at the time because separately located radio studios were available. The wheels of fortune, however, have turned. WJET(FM) is no longer as successful as it was, given the intense competition in the radio market. Jet now plans to integrate fully its radio and television facilities to maximize the economies of scale available and to further improve the service from each station.

Based on its experience, Jet firmly believes that video programming and audio programming are distinct products with separate markets. The fact that a radio station licensee might also own a television station (or two) in the market, in and of itself, has very little impact on whether consumers listen to the company's radio stations. Nor does a television licensee stand to gain viewers simply because it has radio stations in the same area. Essentially, to borrow the language of the Supreme Court, radio and television programming are not commodities "reasonably interchangeable by consumers for the same purposes." United States vs. E.I. duPont De Nemours & Co., 351 U.S. 377, 394 (1956) (quoted in FNPRM at ¶17).

Moreover, co-ownership of radio and television stations by a single entity in the same market does not give that entity market power over local advertising rates. The fact that a television licensee also owns radio stations in the same market does not significantly enhance the ability of that station to raise its advertising rates for either its radio properties or its television properties. Competition in both the radio advertising market and the television advertising market is sufficiently intense that any attempt to unduly raise rates would drive advertisers to other stations or alternative media outlets.

With respect to the question of a diversity of viewpoints, since radio programming and television programming are distinct products, as long as there is not an undue concentration in either medium, there will be sufficient viewpoint diversity on the local level. The numerical limits on local ownership within each medium provide a significant and sufficient safeguard against any such undue concentration. See FNPRM at ¶129. Moreover, the transference of a common viewpoint between the visual and aural media is virtually non-existent among "grandfathered" radio/television combinations with which Jet is familiar.

Abolition of the one-to-a-market rule, in Jet's view, will enhance competition for viewers and listeners. Typically, a radio/television combination can reduce its costs through reduction in personnel, particularly administrative and accounting personnel, and other overhead and equipment expenditures. Such economies would result in economically stronger broadcast licensees who are able to devote greater financial resources to their programming and thus better provide the services desired by the public.

Jet has experienced some economies of scale in its operation. As a smaller market station, those economies are of great relevance given the disparity in available revenue between top-25 market stations and those in smaller markets, such as Erie. Moreover, with such joint operations, there is the ability to provide greater rewards to the "on-air talent" who are adaptable to both visual and aural media. Such an ability is a significant plus in small markets where it is difficult to retain talented personnel.

A combined radio/television facility also has a greater opportunity to serve the listening and viewing public by sharing news gathering resources. In Erie for instance, WJET(FM) is the only FM facility to offer news hourly throughout the day. News is provided by WJET-TV news department personnel. Both WJET-TV and WJET(FM) operate 24 hours a day, seven days a week. Nearly all hours of the day, the television news department is staffed. Thus, whenever news breaks, reports can be carried promptly on both the television and radio stations. WJET(FM) would be financially unable to provide such a "newswatch" if it were not combined with WJET-TV. Overall, the quality and scope of the news and other public service programming carried on WJET(FM) is enhanced by the depth of personnel and other resources available from the television news department.

Another example of a public interest benefit flowing from the joint operation of WJET-TV and WJET(FM) is the Jerry Lewis Telethon for Muscular Dystrophy. The telethon has been a joint endeavor of both WJET-TV and WJET(FM) for many years. The Erie market ranks among the highest in per capita gifts to the telethon. Jet has been honored many times for its contribution to this success. Jet's combined stations have the means, as well as the inclination, to promote the public interest through quality local programming and expanded news services.

Jet strongly urges the Commission to allow television licensees in every size market to own and operate FM and AM radio stations in the same market, subject only to the same restrictions applicable to other entities -- i.e., the radio contour overlap rule of Section 73.3555(a). Based on its long experience -- both in a market where it has held a radio/television combination and in markets where it has not -- Jet urges that the time for abolition of the one-to-a-market rule has come. Television and radio are really very different businesses. A television station's programming is a composite of individual programs targeted to appeal to different audiences, while radio is a life-style medium designed, through a selected program format, to appeal to a particular demographic segment of the area's population. The benefits to the public from common ownership of television and radio stations, regardless of the size of the market, can be substantial. In adopting its current liberal one-to-a-market waiver policy for the top-25 markets, and in adopting its far-reaching rules regarding radio ownership, the Commission duly noted public interest values inherent in creating strong broadcast entities. Abolition of the one-to-a-market rule will result in stronger broadcast entities, without conferring market power upon those entities.

The major and minor players in the great "sea" of broadcast services should be treated alike -- with a policy that will allow existing television broadcast stations in every size market to attain a viable position in the local radio market by acquiring the number of stations Section

73.3555(a) would permit any other entity to control. Jet will be seriously disadvantaged if it is not permitted to match the zeal of its competitors in acquiring the number of radio stations necessary to remain competitive. Such a disadvantage will harm Jet's existing television operation and very likely impact negatively on local ownership in the Erie market.

Furthermore, Jet, like many other television licensees in medium and small markets, is seriously concerned about the availability of funding to make the substantial investment high definition television will entail within the foreseeable future. Abolition of the "one-to-a-market" rule will help television licensees become financially stronger and financially stronger television licensees will be better able to implement this advanced technology. Such radio/television combinations also will be in a better position to effectively compete with other forms of media now developing, such as DBS and DAB.

III. Local Marketing Agreements

LMAs provide licensees and other entrepreneurs flexibility to respond to changing opportunities and needs in the delivered television programming and local advertising markets. As noted above, Jet urges the Commission to relax the duopoly rule to permit a single entity to own two overlapping television signals. Along the same line, Jet urges the Commission to permit the licensee of one television station to broker time on another station in the market. Indeed, such combinations should be allowed even if the duopoly rule is not relaxed. The licensee of a television station which has brokered its time to one or more other entities still remains the licensee. As such, it remains responsible for fulfillment of its non-delegable licensee duties. In light of the size of investment a television station entails, the Commission can well expect the licensee of such a station to fulfill those duties and to keep a close watch on those using its airtime. That licensee, not the broker, is the one that bears the risk of non-renewal, revocation, forfeiture and/or a comparative renewal proceeding.

Jet believes it is appropriate that TV LMAs be subject to the same requirements as radio LMAs. Jet agrees the time brokerage of another station in the same market for more than 15% of the brokered station's weekly broadcast hours should result in counting the brokered station toward the brokering entity's local ownership limits, provided the Commission's television duopoly rule is relaxed to permit ownership of two stations whose contours overlap. (As noted above, even if the duopoly rule is not relaxed, the Commission should permit a licensee to enter into an LMA with another station with an overlapping signal.)

The Commission, to this point, has not restricted television LMAs. Indeed, the Commission has not even "raised its eyebrow" with respect to television LMAs. If, for whatever reason, the Commission now decides to restrict or prohibit television LMAs, existing LMAs should be "grandfathered" for the remainder of their terms, including any option periods presently specified. Both brokering and brokered stations have rested their business decisions on the continued existence of their LMAs. To terminate those LMAs by regulatory fiat would unfairly and unnecessarily cause havoc.

In conclusion, Jet reiterates that in this era of intense media competition, economically stronger television licensees will be better able to compete and thus better serve the public. Liberalization of the television duopoly rule, abolition of the one-to-a-market rule and continued use of LMAs will allow television licensees to gather that necessary strength without conferring anti-competitive market power upon them.

THE JET BROADCASTING CO., INC.

By Dennis F. Begley

Dennis F. Begley

By

Matthew H. McCormick

Its Counsel

Reddy, Begley, Martin & McCormick
1001 22nd Street, NW, Suite 350
Washington, DC 20037

May 17, 1995